

JARED M. KATZ, ESQ.
NICOLE G. KATZ, ESQ.
438 MERIDA DRIVE
SANTA BARBARA, CALIFORNIA 93111
(805) 681-9728
jaredmkatz@yahoo.com
katzfam@cox.net

June 19, 2012

Ms. Doreen Farr, Chair (3rd District) (dfarr@countyofsb.org)
Mr. Salud Carbajal, Vice Chair (1st District) (SupervisorCarbajal@sbcbos1.org)
Ms. Janet Wolf (2nd District) (jwolf@sbcbos2.org)
Ms. Joni Gray (4th District) (jgray@co.santa-barbara.ca.us)
Mr. Steve Lavagnini (5th District) (steve.lavagnino@countyofsb.org)
Santa Barbara County Board of Supervisors
105 East Anapamu Street
Santa Barbara, CA 93101

Re: Cavaletto Tree Farm Housing Project
June 26, 2012

Dear Supervisors:

I write concerning the Cavaletto Tree Farm Housing Project, which is set for hearing before the Board of Supervisors on June 26, 2012. Specifically, I write to object to the Project and to any opening of Merida Drive. Merida Drive should remain closed.

While the project was being heard by the Planning Commission, I submitted several letters dated June 13, 2011, October 17, 2011, and October 25, 2011 (copies attached are Enclosure A) and testified in opposition to the opening of Merida Drive. Under no condition should Merida Drive be opened and connected to Tree Farm Lane. If necessary, the Tree Farm project should be redesigned, so that there are fewer houses in the southwest area of the project, and there will be no claimed need to open Merida Drive.

Tree Farm Lane should be built out in Phase I so that construction traffic can access the project using Tree Farm Lane. In the future, residents can access the project using Tree Farm Lane as well.

Opening Merida Drive would create substantial risks of danger, diminish quality of life and burden the current residents of Merida Drive and University Circle, as well as those who use the park. There will be serious safety dangers presented to the many children who walk, play and bike on Merida Drive, including those who use the footbridge at Berkeley Road and Merida Drive to go to Kellogg School and Goleta Valley Junior High School. Traffic calming measures are not nearly sufficient to protect the children using the road. Children

play and ride their bikes in the road. Dog walkers walk their dogs down the roads. Seniors stroll down the middle of the road. Children, families and sports teams use the public parks on Merida Drive. Bird watchers come to watch birds at the parks. Who will take responsibility if there is an accident that could have been prevented at the planning and design stage?

The many reasons demonstrating why the existing status quo should be maintained are detailed in the enclosed letters. I refer you to the enclosed letters rather than repeat the same points here. I also urge the Board of Supervisors to read the many other written public comments submitted and to view the videotaped record of the many public comments given orally at the hearings of the Planning Commission.

The EIR and accompanying traffic report fail to adequately address the traffic impact on University Circle neighborhood, and this needs to be addressed in an updated EIR before the project can be approved.

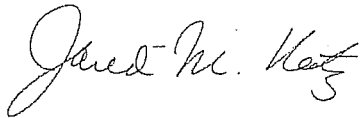
Note, there is important precedent in the University Circle neighborhood for limiting traffic and circulation to adjacent neighborhoods. First, there is a footbridge at Berkeley Road and Merida. While this initially was proposed to be a motor vehicle access, the bridge was limited to pedestrians and bikers based on the sound reasoning of meeting safety and quality of life concerns in the University Circle neighborhood. Second, at the south end of Merida Drive, the road was not opened to connect to the Maravilla Senior Living Community based on similar concerns. Third, Havard Lane was constructed as a cul-de-sac rather than being opened to permit vehicular access to Calle Real. To open Merida Drive now to connect to Tree Farm Lane would very seriously undermine the past efforts made to keep Merida Drive closed, and to maintain limited traffic and the present quality of life in the University Circle neighborhood. I enclose a map with my notations showing you the location of these areas (Enclosure B).

At the Planning Commission hearing, County Counsel raised a question about a particular Vehicle Code section. That particular Vehicle Code is inapplicable here. I attach a copy of my March 23, 2012 letter to County Counsel addressing this issue (Enclosure C).

I urge you to reject the opening of Merida Drive and seek an alternative that will serve, and not dismiss, the interests of the Merida Drive and University Circle residents. There is no legitimate reason why the interests of the Cavaletto Tree Farm Project should be placed above the interests of the longstanding University Circle residents, many of which have lived in their homes for tens of years.

Thank you in advance for giving these comments your most serious attention. Please protect our neighborhood by rejecting an extension of Merida Drive.

Sincerely,

A handwritten signature in cursive script that reads "Jared M. Katz". The signature is written in dark ink and is positioned above the typed name and address.

for

Jared M. Katz
Nicole G. Katz
438 Merida Drive
Santa Barbara, CA 93111

ENCLOSURE A

JARED M. KATZ, ESQ.
438 MERIDA DRIVE
SANTA BARBARA, CALIFORNIA 93111
(805) 681-9728
jaredmkatz@yahoo.com

June 13, 2011

Alex Tuttle, Planner
123 Anapamu Street
Santa Barbara, CA 93101
atuttle@countyofsb.org

**Re: Cavaletto Tree Farm Housing Project
Draft Environmental Impact Report**

Dear Mr. Tuttle:

I write in response to the April 29, 2011 Notice of Availability of and Public Hearing on the Draft Environmental Impact Report for the Proposed Tree Farm Residential Housing Project, 01GPA-00000-00009, 01RZN-00000-0015, 08DVP-00000-0012, 09TRM-00000-00001, 09RDN-00000-00001 (the "Notice"). I am a resident of the University Circle neighborhood, specifically on Merida Drive across from the public greenbelt.

Failure to Give Notice of the June 1 Public Hearing

To start, the Notice says that a public hearing was to be held on June 1, 2011. Despite our close proximity to the proposed project, however, we did not receive the Notice in the mail. We ask you to explain why we are not on the mailing list and ensure we are sent notices about this project going forward. Pursuant to the Notice, I am timely submitting written comments and objections to the Draft Environmental Impact Report ("DEIR").

Increased Traffic Congestion and Noise Pollution, Impact on Neighborhood Activities, Local Wildlife and Park Usage Would Have Deleterious Effects on Merida Drive and the Existing Community

As a homeowner at 438 Merida Drive, who will be substantially affected by the subject development, I object to the DEIR and urge there be no continuation of Merida Drive.

The increased traffic that will result if Merida Drive were continued as proposed would have deleterious effects for the current residents. There would be increased traffic congestion and noise. The risk to residents and pedestrians would increase. The increased traffic and congestion could adversely affect local wildlife. The adverse impact would affect not only our family – we have 3 small children who use the street and park across the street – but the other street and

neighborhood residents. There are many people who use the public greenbelt and park on Merida Drive. There would be unsafe conditions that would accompany the proposed street continuation that are not necessary to the proposed development.

By way of explanation, our family of 5 lives approximately 8 houses down from the northern terminus of Merida Drive, on the corner of Merida and Toltec Drive. One of the reasons we chose to buy our house and live on Merida Drive is that it is located at the end of the development near the park, is a cul de sac and has limited traffic. It's a safe, quiet place to live, enjoy the neighborhood and raise our children.

My children are aged 11, 8 and 5. They ride their bikes and scooters in the street. They cross the street to use the park. There are many other children who are in the street. Increased traffic flow will very negatively affect Merida Drive and unnecessarily create dangerous conditions.

Also the street is very quiet and we do not want nor should we be subjected to increased noise pollution impacting our ability to use and enjoy our property.

Seniors walk up and down Merida from the Maravilla Retirement Community, and many wheelchair-bound individuals come from the group home on Toltec to enjoy the greenbelt and the Berkeley bridge. There are children who ride bikes and scooters in the street, and many students of Kellogg Elementary School and Goleta Valley Junior High school who walk and bike to school daily.

Opening Merida Drive to the new development would endanger all of the individuals, including my loved ones, because of the substantial increase in vehicular traffic. Small children will be exposed to dangerous cars traveling at high rates of speed on the newly extended Merida Drive, not to mention the noise from the hundreds of new vehicles passing by on a daily basis to exit the neighborhood via Berkeley/University and/or Parejo. What is now a quiet, peaceful street will become a noisy, busy thoroughfare for hundreds of residents in the proposed project.

Interference with Public School Programs to Reduce Traffic and Car Use

Opening Merida Drive defeats some of the public service programs that are in effect in the neighborhood. My wife, Nicole Katz, has served as an officer of the Kellogg School P.T.A. for the last 4 years, and she instituted a BOW WOW (Bike on Wednesday, Walk on Wednesday) program at Kellogg in the spring of 2009, with substantial support from the Coalition for Sustainable Transportation ("COAST") and its Safe Routes to School campaign. As part of BOW WOW, a Walking School Bus leaves the Berkeley bridge, on the Merida side, every Wednesday at 7:55 a.m. between early October and mid-May. At least 10 to 20 students gather to walk together to Kellogg, supervised by a neighborhood parent. If Merida is opened to the new development, this Walking School Bus will be in the very midst of new residents rushing down Merida to Berkeley and/or Parejo to get to Patterson and the 101, posing a serious physical threat to those students.

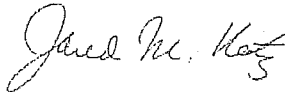
In the DEIR, there is no mention made of why it is necessary to extend Merida Drive to connect with the Patterson entrance for the site. Two similar projects on Las Perlas, Sunrise Village and

Cathedral Oaks Village, have only one major access road. Access from Patterson and Las Perlas alone would be just as efficient, and would channel the traffic away from the University Circle neighborhood. Seemingly, it is solely for the convenience of the developer. This is not a sufficient reason to impact so many residents on Merida Drive and the local neighborhood. Alternative access is available to the proposed development.

Conclusion

We ask that you to please respect our neighborhood and avoid any extension of Merida Drive for the Cavaletto Tree Farm Housing Project. We are strongly against it. My wife and I are both litigation attorneys and intend to take all steps available to oppose the road extension, including appeals and litigation if necessary. We believe that many of the residents of University Circle, and particularly those on Merida Drive, agree with our sentiments. The continuation of Merida Drive does not appear necessary for the proposed development, nor is it prudent nor fair to the current residents.

Sincerely,



Jared Katz
438 Merida Drive
Santa Barbara, CA 93111
(805) 681-9728
jaredmkatz@yahoo.com

cc: Anne Almy (anne@co.santa-barbara.ca.us)

JARED M. KATZ, ESQ.
NICOLE G. KATZ, ESQ.
438 MERIDA DRIVE
SANTA BARBARA, CALIFORNIA 93111
(805) 681-9728
jaredmkatz@yahoo.com
katzfam@cox.net

October 17, 2011

Santa Barbara County Planning Commission
123 Anapamu Street
Santa Barbara, CA 93101
atuttle@countyofsb.org

**Re: Cavaletto Tree Farm Housing Project
Environmental Impact Report ("EIR")
October 19, 2011 Public Hearing**

Dear Planning Commission:

We write in response to the Notice of Public Hearing for the Proposed Tree Farm Residential Housing Project, 01GPA-00000-00009, 01RZN-00000-0015, 08DVP-00000-0012, 09TRM-00000-00001, 09RDN-00000-00001 (the "Notice"). The Notice states the Public Hearing will address, inter alia, the certification of the Environmental Impact Report (11EIR-00000-00002) ("EIR"). We are residents of the University Circle neighborhood, specifically at 438 Merida Drive, across from the public greenbelt.

I. INADEQUATE NOTICE

We received inadequate notice of the hearing and comment period. In the letter dated June 13, 2011 from Jared Katz (Letter 17 in Section 9.0 of Final EIR), we complained that we had not received notice of the June 1, 2011 hearing on the Draft EIR. We asked that we be placed on the notice list.

This time, we were sent an email on October 10, 2011, providing notice that the hearing on the EIR was set for October 19, 2011, and that written comments were due by 12:00 p.m. on October 17, 2011. Yet the EIR that is the subject of the hearing is, with attachments, approximately 1048 pages. The Staff Report is 192 pages. The inadequate notice provided has precluded us from fully reviewing these documents and offering a full range of comments. This is the second time we received inadequate notice of the hearings on this project.

The comments provided herein are abridged because of the inadequate notice. The only fair way to redress the issue is to continue the hearing and keep open the public comment period

for at least another 30 days, so that complete written comments can be provided.

II. GENERAL COMMENTS

The general comments made in this section mirror those raised in the June 11, 2011 letter from Nicole Katz and the June 13, 2011 letter from Jared Katz (Attached as Letters 14 and 17, respectively, in Section 9.0 of the Final EIR). The specious responses provided in the EIR to these comments do not truly address the concerns. Rather they are argumentative, devoid of factual support and contrary to the actual facts. These specious responses are made by the applicant in his own self-interest in seeking approval for a project that is of very serious concern to a large number of residents in the surrounding area.

A. **Increased Traffic Congestion and Noise Pollution, Impact on Neighborhood Activities, Local Wildlife and Park Usage Would Have Deleterious Effects on Merida Drive and the Existing Community**

As homeowners who will be substantially affected by the subject development, we object to the EIR and specifically urge there be no continuation of Merida Drive and/or connection of Merida to Tree Farm Lane.

The Penfield and Smith Traffic Report is inadequate on this subject, and ignores the facts. When discussing the connection of Tree Farm Lane and Merida, it states that “[t]his connection would provide access to the neighborhood south of the project and does not provide a direct route to Patterson Avenue. It is therefore not expected to carry any significant project traffic. . . . “ This statement is contrary to objective fact; it can only be made by someone who has never been in our neighborhood and/or actually observed the traffic patterns there.

Although Merida does not connect to Patterson, many of our neighbors use it specifically to get to Parejo, and then out to Patterson, putting them at the front of the line waiting to enter the 101 freeway. If Merida is extended, residents of the new project will do the exact same thing, rushing down Merida on their way to Parejo. This will have a seriously detrimental impact on Merida Drive.

Response 13.1 in Section 9.0 of the EIR, acknowledges this very reality, and cites it as the reason that Recommended Mitigation Measure T-3(e) has been added to the Final EIR, requiring that Tree Farm Lane and its connection to Patterson be completed as part of the first phase of project construction.

In fact, there will be increased traffic, and the traffic that will result would have deleterious effects for the current residents. There would be increased traffic congestion and noise. The risk to residents and pedestrians would increase. The increased traffic and congestion could adversely affect local wildlife. The adverse impact would affect not only our family – we have 3 small children who use the street and park across the street – but the other streets and many neighborhood residents. There are many people who use the public greenbelt and park on Merida Drive. There would be unsafe conditions that would accompany the proposed

street continuation that are not necessary to the proposed development.

Opening Merida Drive to the new development would endanger many individuals, including our loved ones, because of the substantial increase in vehicular traffic. Small children will be exposed to dangerous cars traveling at high rates of speed on the newly extended Merida Drive, not to mention the noise from the hundreds of new vehicles passing by on a daily basis to exit the neighborhood via Berkeley/University and/or Parejo. What is now a quiet, peaceful street will become a noisy, busy thoroughfare for hundreds of residents in the proposed project.

Two neighboring projects to the proposed development, Cathedral Oaks Village and Sunrise Village, have only one major access road, and Cathedral Pointe has only two. Access from Patterson and Las Perlas alone would be just as efficient, and would channel the traffic away from the University Circle neighborhood. Seemingly, it is solely for the convenience of the developer that the extension of Merida is proposed. This is not a sufficient reason to impact so many residents on Merida Drive and the local neighborhood. Alternative access is available to the proposed development.

B. Interference with Public School Programs to Reduce Traffic and Car Use

Opening Merida Drive defeats some of the public service programs that are in effect in the neighborhood. The Kellogg School P.T.A. instituted a BOW WOW (Bike on Wednesday, Walk on Wednesday) program at Kellogg in the spring of 2009, with substantial support from the Coalition for Sustainable Transportation ("COAST") and its Safe Routes to School campaign. As part of BOW WOW, a Walking School Bus leaves the pedestrian foot bridge, on the Merida side, every Wednesday at 7:55 a.m. between early October and mid-May. At least 10 to 20 students gather to walk together to Kellogg, supervised by a neighborhood parent. If Merida is opened to the new development, this Walking School Bus will be in the very midst of new residents rushing down Merida to Berkeley and/or Parejo to get to Patterson and the 101, posing a serious physical threat to those students.

II. INADEQUACY OF STAFF REPORT AND RESPONSES IN THE EIR.

The Staff Report and EIR responses to these concerns do not truly address them. To the contrary, they admit they are in fact true. The Staff Report indicates that "[i]n order to reduce these impacts . . . the EIR included a recommended mitigation measure requiring that Tree Farm Lane be connected to Patterson Avenue as part of the initial phase of development. This has been incorporated as a condition of project approval." (Staff Report, page 5, para. 2, lines 20-25). This acknowledgement of the detrimental effect on the University Circle neighborhood needs to be extended even further, to stop the connection of Merida to Tree Farm Lane. With Tree Farm Lane connecting to Patterson in the initial development phase, there is absolutely no reason to open Merida Drive and/or connect it to Tree Farm Lane. Keeping Merida Drive as it is will avoid the need to add a stop sign and/or to conduct the additional traffic studies mentioned in the Staff Report. Further, the suggestion is nonsense that adding a bike path would have any real affect on mitigating the increased traffic problems that will result if Merida Drive is extended. (Staff Report, page 20, para. 2, lines 9-11).

The Staff Report states the proposed project would add approximately 1,081 average daily trips to area roads and intersections. If Merida Drive were opened up to the proposed project, the amount of increased traffic would not only significantly impact the residents and users of Merida Drive and the park area but it will very significantly change the environment and characteristics of the neighborhood. There will be greatly increased traffic flow, noise and congestion. The safety concerns will be extremely significant. With Tree Farm Lane being opened to Patterson in the initial phase of development, a requisite condition for approval of the project, there is no valid reason why Merida Drive should be opened to the proposed project.

Additionally, the traffic study that is an exhibit to the EIR is entirely insufficient and does not reliably address the traffic impact on Merida Drive. To the contrary, it gives the subject short shrift, wholly failing to recognize the serious significance of the issue.

Since there will be other access to the proposed project, Merida Drive should remain closed.

III. CONCLUSION

Above all, it is imperative that as a condition of approving the project, there should be no extension of Merida Drive. The proposed extension of Merida Drive will dramatically change the character – and forever change the charm -- of the street to the detriment of the current Merida Drive residents and the many, many other users of the street and adjacent parks.

Allowing an extension will be unsafe and unfair. It is not necessary to the proposed project to extend Merida Drive, there will be alternate access including the new Tree Farm Lane. Extending Merida Drive above the objections of the neighborhood residents would place the wants of the developer over the needs of the current residents.

The Staff Report notes at page 5 that to approve the project there must be a finding made that the proposed project will not be detrimental to the comfort, convenience, general welfare, health, and safety of the neighborhood and will not be incompatible with the surrounding area. One need look no further than the more than 90 written comments submitted to Alex Tuttle in June 2011 as indisputable proof that extending Merida Drive would in fact be detrimental to and incompatible with the surrounding area, precluding a finding necessary for project approval. The traffic conditions in the neighborhood are already sometimes unsafe. The proposed extension will make things much worse.

The Staff Report notes in different places that the proposed project will in fact result in increased traffic congestion on Merida Drive. Yet it appears the Staff Report and EIR are concluding that the interests, convenience, comfort, welfare, and safety of the Merida Drive and University Circle residents should not be respected, but rather should be subjected to the desires of the developer. We will pursue this issue through appeals and litigation if necessary.

Second, the public comment period and hearing should be continued for at least 30 days to provide fair opportunity to provide full comment on the EIR. The comments made in this letter to the EIR which contains many objectionable findings are abridged due to the practical time

constraints resulting from the inadequate notice given of the public hearing.

Thank you in advance for giving these comments your most serious attention. Please protect our neighborhood by rejecting an extension of Merida Drive.

Sincerely,

for

Jared M. Katz
Nicole G. Katz
438 Merida Drive
Santa Barbara, CA 93111

JARED M. KATZ, ESQ.
NICOLE G. KATZ, ESQ.
438 MERIDA DRIVE
SANTA BARBARA, CALIFORNIA 93111
(805) 681-9728
jaredmkatz@yahoo.com
katzfam@cox.net

October 25, 2011

Santa Barbara County Planning Commission
123 Anapamu Street
Santa Barbara, CA 93101
atuttle@countyofsb.org

Re: Cavaletto Tree Farm Housing Project
October 26, 2011 Public Hearing (continuation of October 19 hearing)

Dear Planning Commission:

Yesterday afternoon, October 24, we were informed of a tentative recommendation to be made to open Merida Drive in the later phases of the Cavaletto Tree Farm Development, following a closed door meeting that occurred on October 24 between the developer, the applicant, Public Works and Fire Department, and attended by Commissioner Cecilia Brown. We object and strongly urge you to reject this recommendation, and instead close off Merida Drive to any future traffic and make it a cul de sac.

We submitted a letter voicing our strong objection to any extension of Merida on October 17, 2011, and both took time out of our schedules to be present at the morning session of last week's hearing, and to make public comments. There were many of our neighbors in attendance at the hearing, although some were not comfortable with public speaking and chose not to speak. There are many other neighbors we have spoken with who object to any extension of Merida Drive.

Following the public comment – which was unanimously against any extension of Merida Drive – Mr. Nelson stated verbally, and in his power point presentation, that it was not their decision to extend Merida, but rather a “mandate from Roads and Fire.” These statements were later proven to be false, as representatives from both the Public Works and the Fire Department testified that it was not their decision or their mandate to extend Merida.

- The Public Works representative testified that Public Works would prefer not to have Merida Drive opened because the County lacks the resources to maintain another public road. The effect of opening Merida Drive is to make Tree Farm Lane a public road. Public Works also testified there are other alternatives to opening Merida Drive.

- Having heard the neighbors' objections, the Fire Department representative testified that he previously was unaware of the level of objection and stated that in response, the fire Department was agreeable to closing off Merida Drive and making it a cul de sac.

There is sufficient egress and ingress into the development without the Merida Drive extension, as confirmed by the Fire Department representative last Wednesday. He suggested that both Merida Drive and Tree Farm Lane terminate in cul de sacs, to allow the turnaround of emergency and other vehicles, and we would have absolutely no objection to that suggestion, and would actually embrace it.

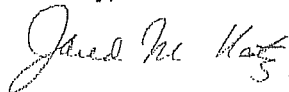
There is no legitimate reason to open Merida Drive over the objections of the current Merida Drive residents and other residents in the University Circle neighborhood. In fact, it has become clear the primary motive for the extension of Merida is the creation of a County road, maintained with County funds (versus a private road, to be paid for by the developer), in total disregard of the safety of our family and neighbors. It is an unfair burden to place the increased traffic of the new development on Merida Drive residents. For years, Merida Drive has been a closed quiet street, with a park on it. There are children riding bikes and playing in the street, seniors and dog walkers in the street. There are bird watchers who come to see the birds in the greenbelt. In balancing the equities, maintaining the status quo on Merida Drive should prevail over degrading the University Circle neighborhood just to make the Cavaletto developer more money.

We do not wish Merida Drive to be opened at any stage/phase of development, and again request that you respect the residents of Merida Drive and our neighborhood as a whole and act to protect our safety interests. The proposed project will be detrimental to the comfort, convenience, general welfare, health, and safety of the neighborhood and will be incompatible with the surrounding area.

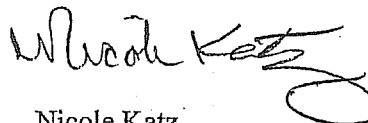
Additionally, we previously requested that the public comment period on the EIR be extended at least 30 days. Because of the short notice given, we have had insufficient opportunity and been deprived our due process rights to provide full comment on the EIR as a whole. We are exploring now the retention of a public planner, with whom we have worked previously, to assist us with our opposition, appeals and litigation.

Please give the matter of Merida Drive your most serious consideration, as it is of most serious concern to the current residents of Merida Drive and University Circle.

Sincerely,



Jared Katz
438 Merida Drive
Santa Barbara, CA 93111



Nicole Katz
438 Merida Drive
Santa Barbara, CA 93111

ENCLOSURE B

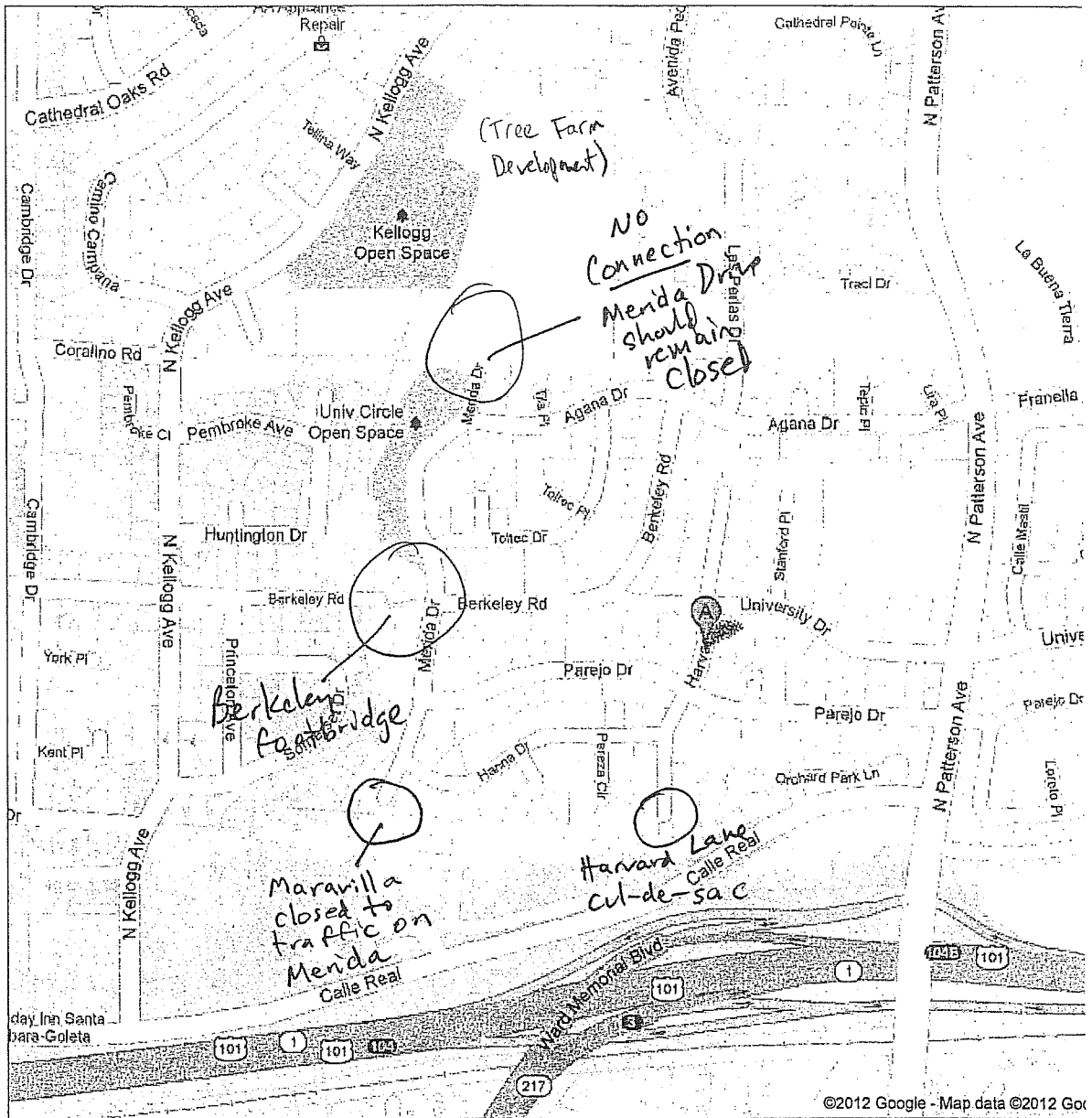


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ENCLOSURE C

JARED M. KATZ, ESQ.
438 MERIDA DRIVE
SANTA BARBARA, CALIFORNIA 93111
(805) 681-9728
jaredmkatz@yahoo.com

March 23, 2012

Rachel VanMullem, Esq.
Santa Barbara County Counsel
105 E. Anapamu Street, Rm. 201
Santa Barbara, CA 93101

Re: Cavaletto Tree Farm Housing Project

Dear Ms. VanMullem:

I write about the Cavaletto Tree Farm Housing Project (the "Project"); and, specifically, to explain why *Vehicle Code section 21101.6* has no application to the Project conditions recommended by the Planning Commission. This is an extremely important point for University Circle residents.

SUMMARY

The Planning Commission held five (5) public hearings, during which they received public comment from University Circle residents about the serious safety, public welfare, and traffic issues arising from the Project, including the avoidable issues that would result if Merida Drive is connected to Tree Farm Lane. Based on the public comment, the Planning Commission imposed certain, duly-considered conditions on the Project, including the following:

1. Tree Farm Lane shall be built out to Patterson, and made operational, as part of Phase I; and
2. The connection between Merida Drive and Tree Farm Lane shall be for emergency use only *and shall be designated by signs*. The connection shall include narrowed street widths, a median, alternative paving materials, and other available measures to deter use of the connection for non-emergency uses.

At the February 1, 2012 hearing, you raised a question in talking to the Planning Commissioners about whether *Vehicle Code section 21101.6* might prevent the use of such a sign. The answer to your question is no, it does not. This Vehicle Code section does not apply here. Below I explain why.

DISCUSSION

Based on the plain language of *Vehicle Code section 21106.6*, the statute is inapplicable here. The statute is intended only to prevent a public road from being opened in a discriminatory manner to some members of the public, while being closed to others. The statute is not implicated by the Planning Commission recommendation that the proposed connection between Merida Drive and Tree Farm Lane be for emergency uses only, in order to meet safety and public welfare concerns.

Vehicle Code section 21101.6

The statute reads as follows:

Notwithstanding Section 21101, local authorities may not place gate or other selective devices on any street **which deny or restrict the access of certain members of the public to the street, while permitting others unrestricted access to the street.**

This section is not intended to make a change in the existing law, but is intended to codify the decision of the Court of Appeal in *City of Lafayette v. County of Contra Costa* (91 Cal. App. 3d 749). (Emphasis added.)

Thus, the statute expressly proscribes the discriminatory use of a “gate” or “other selective devices” to close a public road to some persons but not others. But the statute does not apply where all members of the public are treated equally. The Planning Commission’s recommendation treats all members of the public equally. Moreover, the Planning Commission did not recommend the closure of Merida Drive, which will remain open to everybody via the currently-existing roadways.

City of Lafayette

Since the statute codifies the holding of *City of Lafayette v. County of Contra Costa*, I discuss that case here. In *City of Lafayette, supra*, a city sued a county for declaratory relief, seeking a judicial declaration that it was entitled to close a street within its city limits to through traffic, except for drivers with an established need to use the street, by the installation of a “traffic diverter,” *i.e.*, an automatic gate. 91 Cal. App. 3d at 751. These special, exempted drivers would be given a gate opener that other members of the public would not have. *Id.* at 752. The court held that “the city was without police power, or other authority, to deny the use of the street to some members of the traveling public, while granting it to others.” *Id.* at 749, 758. The court stated that the city would have been within its power to close the street to all traffic, since in such an instance all members of the public would be treated equally. *Id.* at 756-757.

Rachel VanMullem, Esq.
March 23, 2012
Page 3

The decision of the court of appeal in *City of Lafayette* is that all members of the public must be treated equally. A municipality cannot open a street to some but close it to others, since that would be unlawfully discriminatory. Thus, the decision of *City of Lafayette* is quite limited.

The decision in *City of Lafayette* simply does not apply here. The Planning Commission does not recommend that members of the public be treated differently, but rather that everybody be treated the same. There will be no gate installed on Merida Drive as there was in *City of Lafayette*. For all members of the public, the proposed connection between Merida Drive and Tree Farm Lane would be for emergency use only. Nobody will be discriminated against or treated unequally.

Moreover, under the *City of Lafayette*, the County would have authority to restrict access on Merida Drive so long as all members of the public were treated equally. But Merida Drive will not be closed to anybody. Last, in *City of Lafayette*, there was a conflict between a city and a county. Here there is no potential for such a conflict between competing municipalities.

Vehicle Code section 21101.6 states that it is not intended to be interpreted more broadly than the decision of the court of appeal in *City of Lafayette*. If the statute were to be applied here, that would twist and distort the meaning of it and violate the legislative mandate that the statute not be expanded beyond what the court of appeal held in *City of Lafayette*.

CONCLUSION

Vehicle Code section 21101.6 is a red herring. The Planning Commission recommendations treats all members of the public equally. The Planning Commission does not recommend a gate that would restrict certain members of the public from accessing Merida Drive. In fact, Merida Drive will not be closed but will remain open to all via the currently existing roadway.

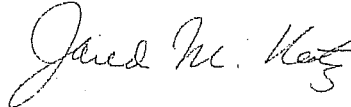
I, along with other residents of University Circle, urge that Merida Drive not be connected to Tree Farm Lane. Yet, if the connection is opened, it should be for emergency use only, consistent with the recommendations of the Planning Commission. Moreover, it is imperative that Tree Farm Lane be built out to Patterson and made operational in Phase I of the Project, since that is the ingress and egress for the Project.

Please recognize that this issue is of sufficient significance that if necessary we are prepared to raise it with the court. It is imperative that the legitimate safety and public welfare needs of the University Circle residents be met in order for the Project to succeed.

Rachel VanMullem, Esq.
March 23, 2012
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Thank you very much for considering these points. Please not hesitate to contact me for any reason. I would be happy to meet with you to discuss the matter further.

Very truly yours,

A handwritten signature in cursive script that reads "Jared M. Katz". The signature is written in dark ink and is positioned above the printed name.

Jared M .Katz

cc. Janet Wolf
Cecelia Brown
Alex Tuttle